

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SCHEEL PUBLISHING, INC.,	)	CASE NO. 1:20-CV-76
	)	
Plaintiff,	)	
	)	JUDGE DAN POLSTER
vs.	)	
	)	
RIYAD (ROD) KHLEIF, <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' MOTION FOR RECONSIDERATION OF THE COURT'S  
MARCH 10, 2020 ORDER DENYING DEFENDANTS' MOTION TO ALLOW  
DEFENDANTS' REPRESENTATIVE TO APPEAR BY PHONE**

Pursuant to Federal Rule of Civil Procedure 59(e), Defendants Riyad (Rod) Khleif (“Mr. Khleif”), Tiffany Lowe (“Ms. Lowe”), Lifetime Cashflow Academy, LLC (“Lifetime”), and REM Equity Group, LLC (“REM”) (collectively, “Defendants”) hereby move for reconsideration of the Court’s March 10, 2020 Order. Simply stated, the COVID-19 outbreak warrants reconsideration in light of recent developments both locally and across the country. Moreover, due to Mr. Khleif’s health concerns, as more fully set forth herein, Mr. Khleif should not have to risk his life by traveling to the Case Management Conference.

Since Defendants filed their Motion to Allow Defendants’ Representative to Appear by Phone, the situation regarding COVID-19 in the State of Ohio has drastically changed for the worse. Yesterday afternoon, it was confirmed that three individuals in Cuyahoga County tested positive for COVID-19 and the State of Ohio declared a state of emergency. (*See* Executive Order 2020-01D, Mike DeWine Declaring a State of Emergency, attached hereto as Exhibit A.) Executive Order 2020-01D states that the positive test for COVID-19 creates “a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.” (*Id.* at

2.) This afternoon, Governor Mike DeWine recommended, *inter alia*, canceling in-person college classes and banning spectators from sporting events and concerts.<sup>1</sup> (March 10, 2020, Cleveland.com Article, attached hereto as Exhibit B.) Governor DeWine stated that “[t]he decisions we make as individuals in the next few days, the next several weeks will really determine how many lives will be lost in Ohio.” (*Id.* at 3.) Governor DeWine continues that his office is asking state agencies and departments to look at whether their employees can work remotely from home. (*Id.* at 4.)

Mr. Khleif did not file this lawsuit and should not have to risk his life defending it by traveling to the Case Management Conference, especially where the Court allows a party to appear by phone at a CMC for under hardship. According to the Centers for Disease Control and Prevention’s (“CDC”) guidance for people at risk for serious illness from COVID-19, Mr. Khleif believes the threat to his life is an undue hardship.

Today, the CDC reviewed its guidance for people at risk for serious illness from COVID-19.<sup>2</sup> According to the CDC, individuals with higher risk of getting very sick from COVID-19 include older adults and people with chronic medical conditions like heart disease and diabetes. For those individuals at higher risk for serious illness, the CDC advises that “it is extra important for you to take actions to reduce your risk of getting sick with the disease.” Mr. Khleif is sixty years old. (Declaration of Rod Khleif (“Khleif Dec.”), attached hereto as Exhibit C, at ¶3.) Mr.

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<sup>1</sup> *Ohio Gov. Mike DeWine Recommends Canceling College Classes, Banning Fans from Sports Games to Stop Coronavirus*, Cleveland.com (Mar. 10, 2020, 2:58 PM), <https://www.cleveland.com/open/2020/03/gov-mike-dewine-recommends-canceling-college-classes-banning-fans-from-sports-games-to-stop-coronavirus.html>

<sup>2</sup> People at Risk for Serious Illness From COVID-19, CDC (Mar. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>; see also *CDC: Americans Over 60 should ‘Stock Up’ on Supplies, Avoid Crowds*, The Hill (Mar. 9, 2020, 2:12 PM), <https://thehill.com/policy/healthcare/486645-cdc-americans-over-60-should-stock-up-on-supplies-avoid-crowds>

Khleif has a weakened immune system. (Khleif Decl. at ¶4.) Further, Mr. Khleif has a history of heart disease and diabetes in his family. (*Id.* at ¶5.) Currently, Mr. Khleif has high cholesterol and has had mini strokes. (*Id.* at ¶6.) As such, Mr. Khleif believes that he is at a higher risk of serious illness from COVID-19. The CDC recommends individuals with higher risk stay at home as much as possible in communities where COVID-19 is spreading. The State of Ohio is experiencing an outbreak of COVID-19 as discussed above that is evolving daily.

Mr. Khleif is also at risk in leaving the State of Florida where he resides to travel to Ohio. The State of Florida is experiencing an outbreak of COVID-19. On March 1, 2020, the State of Florida declared a state of emergency after two individuals tested positive for COVID-19. (*See* Executive Order 20-51, attached hereto as Exhibit D.) Executive Order 20-51 states that “the CDC has advised **older travelers and those with chronic medical conditions** to avoid nonessential travel.” (Exhibit D at 2. (emphasis added)) Accordingly, pursuant to the CDC guidance for individuals with higher risk for serious illness from COVID-19, Mr. Khleif should not be required to travel to the State of Ohio at this time and risk his health.

Furthermore, the CDC has recommended that “travelers avoid all nonessential travel.”<sup>3</sup> The State of Ohio and various other entities have taken an abundance of caution in limiting the spread of COVID-19 by travelers. For example, on March 5, 2020, the State of Ohio issued an Order prohibiting General Spectator Attendance for the Arnold Classic Sports and Fitness Expo. The concerns for the spread of COVID-19 included, *inter alia*, “the attendance of individuals ...from other parts of the United States affected by COVID-19.”<sup>4</sup> (*see e.g.* Director’s Order dated

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<sup>3</sup> *COVID-19 in China*, CDC (Jan. 6, 2020), <https://wwwnc.cdc.gov/travel/notices/warning/novel-coronavirus-china>

<sup>4</sup> *See State Issues Order Prohibiting General Spectator Attendance for Arnold Sports Festival*, Ohio Dep’t of Health (Mar. 6, 2020), <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/Novel-Coronavirus/resources/Order-Arnold-Sports-Festival> (emphasis added).

March 5, 2020, attached hereto as Exhibit E, at 3.) Other exemplary events that have been cancelled in March include the following:

- *Statement Regarding Coronavirus*, BNP Paribas Open (Mar. 8, 2020), <https://bnpparibasopen.com/coronavirus/>
- *City of Austin Cancels SXSW March Events*, SXSW (Mar. 6, 2020), <https://www.sxsw.com/2020-event-update/>
- *WOW 2020 Cancellation Statement*, Baltimore's Women of the World Festival (Mar. 4, 2020), <https://wow-baltimore.org/news/wow-2020-cancellation-statement/>
- 2020 HIMSS Global Health Conference & Exhibition (Mar. 5, 2020), <https://www.himssconference.org/updates/himss-update-coronavirus>

(See screenshots of statements attached hereto as Exhibit F.)

In addition, federal and state courts have taken various approaches to responding to COVID-19. On March 10, 2020, an article posted on Bloomberg Law<sup>5</sup> (attached hereto as Exhibit G) analyzed several of these approaches. According to the article, the U.S. Court of Appeals for the Ninth Circuit cancelled all *en banc* hearings and non-case-related meetings for the week of March 9. (Exhibit G at 2.) The Ninth Circuit permitted counsel to seek leave to appear remotely for oral arguments. (*Id.*) The article continues that Judge J. Campbell Barker for the U.S. District Court for the Eastern District of Texas issued orders stating that if a “hearing, trial, or deposition may cause a person to travel or act contrary to official guidance or precautions regarding the COVID-19 virus,” the parties or counsel shall request to postpone the event or conduct it via videoconference. (*Id.*) The article further states that it will conduct conferences and hearings by phone when “practicable and efficient to do so.” (Exhibit G at 3-4.)

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<sup>5</sup> Mindy Rattan, *Analysis: Courts Issue Range of orders Responding to Coronavirus*, Bloomberg Law (Mar. 10, 2020, 6:41 AM), <https://news.bloomberglaw.com/us-law-week/analysis-courts-issue-range-of-orders-responding-to-coronavirus>

In addition, today “Administrative Judge Brendan J. Sheehan said the Cuyahoga County Court of Common Pleas will conduct court business over the phone as much as possible.” (March 10, 2020, News5Cleveland Article attached hereto as Exhibit H.)

Pursuant to the above, Defendants respectfully request that the Court reconsider Defendants’ Motion to attend the Case Management Conference and allow Defendants’ representative, Mr. Rod Khleif, to attend by phone.

Respectfully submitted,

**EMERSON THOMSON BENNETT, LLC**

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